

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
445 12<sup>th</sup> Street SW, Washington, DC 20554

To the Attention of: Distinguished Lady Marlene H. Dortch

Acting Director of the Office of Communications Business Opportunities (OCBO)

February 11, 2003

In the Matter of	)	
Review of Dominant versus	)	CC Docket No. 01-337 &
Non-dominant Telecommunication	)	CC Docket No. 01-338
Services	)	

**COMMENTS OF THE 21<sup>st</sup> CENTURY INFRASTRUCTURES CONSORTIUM**

**I. EXECUTIVE SUMMARY**

1. Distinguished colleagues from the Fiber-to-the-Home Council (hereafter referred to as the FTTH Council), an organization based in Corning, NY, emphasizes that as per Section 706 of the 1996 Telecommunications Act, the Federal Communications Commission (hereafter referred to as the Commission) is obliged to enable and encourage the deployment of advanced telecommunications capabilities. The 21<sup>st</sup> Century Infrastructures Consortium (hereafter referred to as 21<sup>st</sup> CiC) agrees with the FTTH Council that Fiber-to-the-home (FTTH) is among the few broadband solutions that meets the definition of "advanced telecommunications capability" that does not rely on legacy network elements. FTTH is also the only technology that provide the necessary bandwidth for a future-proof, true-broadband infrastructure.

2. The FTTH Council also argues, rightly so, that FTTH technology based systems provide "an extraordinary increase in bandwidth per network investment dollar than copper or coaxial technologies". However, the FTTH Council goes on by explaining that Incumbent Local Exchange Carrier (hereafter referred to as ILEC[s]) officials claim that "regulation is the most significant barrier to their investment in FTTH broadband solutions".

3. In contrast to the "lobby efforts" by the FTTH Council, 21<sup>st</sup> CiC requests the FCC do not place all carriers on equal footing in building, operating, exploiting and servicing FTTH infrastructures and networks. The 21<sup>st</sup> CiC argues that contrary to the FTTH Council's recommendations, the Commission should conclude that ILEC-owned or operated FTTH networks are dominant. 21<sup>st</sup> CiC is of the opinion that, if the FCC were to follow the recommendations, the Commission would not only "decimate" any small or medium sized company's business opportunities and efforts of building a profitable FTTH system, it would also endanger the chances of further, serious, deployment of advanced telecommunications capabilities to all Americans. According to 21<sup>st</sup> CiC the ILECs will not make serious attempts to build FTTH networks, because it will cannibalize the revenue opportunities of Digital Subscriber Line operations on their own, updated, copper infrastructure, whether in a "green field" or "overlay" situation.

4. The 21<sup>st</sup> CiC not only doubt the "dramatic acceleration of ILEC-owned FTTH networks" as the Council claims in case the FCC would decide positive on their behalf, but also knows that ILECs will use this relief on requirement of unbundling services as a power tool to keep potential (de facto smaller) competitors out of the FTTH industry. The

distinguished director and decision makers of the FCC should investigate why companies such as Bell Atlantic have acquired FTTH or FTTC (Fiber-to-the-Curb) operators, with the most advanced services imaginable, for tens of millions USD, and then shut the company down within a short timeframe. The FCC should also reason why an ILEC would want to cannibalize its own legacy systems, which they feel, and openly claim, can be "squeezed" out for the next twenty years. It is important to note that FTTH is considered a major threat to ILECs, not an opportunity, as the FTTH Council claims on behalf of the ILECs. To have bundled services will stimulate their stronghold. At first, the 21st CiC foresees, the ILECs will show a major interest, resulting in maybe a few hundred thousand or even a million "trial" connections. But then, after the competition is squeezed out of the market, the conclusion most likely will be "that there is no need for FTTH developments, because the rest of United States' 90 million households can do with broadband speeds as deliverable by DSL (or COAX/CATV for that matter)".

## **II. INTRODUCTION**

5. These comments are being submitted by the 21st CiC in response to the FTTH Council's lobby efforts in regards to the Notice of Proposed Rulemaking "In the Matter of Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunication Services", CC Docket No. 01-337.

6. The 21st CiC is a newly, internationally organized and operating, non-profit association of companies, organizations and individuals with a mission to educate and inform the public and business world in- and about the major advantages that FTTH and Fiber-to-the-Desk services will bring to the way they entertain, inform, work and educate. 21st CiC membership has just started, resulting already in more than 40 membership applications. The focus of 21st CiC is not only to have major companies as member, but especially the small start ups from the new Next-Generation service provider's (FTTH/FTTD/FTTx) industry. One of the unique propositions of 21st CiC is that students and professors can become members too, free of charge, at the individual level. On the professional level, 21st CiC can be considered the equivalent of the association of today's legacy operators, the National Cable and Telecommunications Association. As said earlier, FTTH is a threat to the legacy system operators, therefore 21st CiC can mainly be considered as an association of Next-Gen operators, with a mission to educate and inform, as well as to collectively, as a trade association, take action and providing a single, unified voice on issues affecting the Next-Gen service industry.

7. The 21st CiC concluded, after researching and examining the statements made by the FTTH Council on behalf of the ILECS, that while the Council takes care of the interests of major Telco corporations and vendors, it should focus its own efforts to make FTTH happen in the real world. The 21st CiC is organizing a major inauguration event in Vancouver, Canada, on May 21<sup>st</sup> and May 22<sup>nd</sup>, 2003, with a two-day conference to introduce the financial profits and economical benefits of investing in FTTH. Several government speakers from Canada and the US will be speaking at this event. A two-day exhibition will be organized in the United States in October, 2003.

## **III. ILEC-OWNED OR OPERATED FTTH NETWORKS SHOULD BE CONSIDERED DOMINANT**

8. The 21st CiC recommends that the Commission decide that ILEC-owned FTTH networks are and will be dominant. The FCC should be aware that several major players in the investment industry may not be willing to invest in promising start-up FTTH/FTTx companies, simply for the fact that they have no faith in competing against ILECs. The

FCCs, in case it will decision that ILEC-owned/leased/operated networks are Non-Dominant, will decimate, if not eliminate, the competitive run of small and medium sized operators.

#### **IV. CONCLUSION**

**9.** The Commission has an obligation under Section 706 of the 1996 Telecommunications Act to encourage deployment of FTTH therefore it also has the obligation to investigate the purchases and "research" trials and studies of ILECS in the past ten/fourteen years, to find out what has kept the ILECs from building FTTx networks already. It may not be, as the FTTH Council claims, the technological improvements, or lower cost of optical components that drives the ILECs today to start building FTTH networks. It is the rising of various start-ups who have serious means and goals to build small or large FTTx networks in their monopoly strongholds. Fearing that the crystal-clear voice services over FTTH infrastructures will beat their copperbased voice services out of the market, the ILECS are now trying to find Machiavellian strategies to defend their field and outsmart the competition at the same time. 21st CiC is of the opinion that ILECs are using diplomatic means to keep the competition from (successfully) entering the FTTx industry.

**10.** It is widely known that RBOCs (Regional Bell Operating Companies) waited ten (10) years before they made Digital Subscriber Lines (DSL) available to the public. It was the success of CATV operator's Cable-Modem deployments that forced the Bells to change their passiveness into active efforts of selling DSL services. Were it not the successes of CATV operators' Internet offering services, the public would have been deprived from DSL connectivity to this day. This claim is also officially made by the National Cable & Telecommunications association in their "Cable & Telecom Industry Overview, 2002, page 22 ([http://www.ncta.com/pdf\\_files/YERDraft.pdf](http://www.ncta.com/pdf_files/YERDraft.pdf)). This issue shows the reluctance of Telcos to promote new technologies, even while being perfectly capable and ready to market it.

**11.** The FTTH Council argues that competitive FTTH networks far outnumber ILEC-owned FTTH networks, but that is exactly the point made by 21st CiC: Telcos/ILECs will not promote these new technologies. It will also not happen when the FCC meets their demands. The Council also emphasized that "ILEC networks do not have a competitive advantage in deploying FTTH solutions, as ILEC legacy networks are not capable of supporting modern FTTH deployments". This statement, based on reality, gives further reason to wonder whether ILECs would want to invest tens of billions of dollars, which they have to get from the same markets as the small and medium start-ups, while they have already, most recently, invested tens of billions of dollars in upgrading their legacy networks.

**12.** However, seen from the operational side of the "competition" argument, since ILECs and CATV operators have already a middle-mile/neighbourhood node Fiber optic infrastructure, it would require them less investments to deploy last-mile FTTH/FTTx connections, when they want, and financially can afford to do so. The dominant, monopolistic position of ILECs and CATV operators means that they have easier access to Real Estate (owners and managers) as well as that they have the advantage to "overlay" FTTH connections over their existing infrastructures. This means that they can invest in FTTH/FTTx networks in a certain area while they have still a revenue-generating system up and running at that very same location. This is considered a major advantage for any ILEC or CATV operator who would decide, against all odds, to build and operate

FTTx systems. Therefore, and among other reasons, ILECs (as well as CATV operators) has to be considered dominant in this space.

**13.** It is 21st CiC's appeal that the Commission should encourage the deployment of advanced telecommunications capabilities but that it can only happen when the FCC determines that ILEC-owned or operated FTTH networks are to be considered dominant and unbundling of services should be required.

Respectfully submitted on behalf of our members,

**21<sup>st</sup> CENTURY INFRASTRUCTURES CONSORTIUM**

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